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The cases are not in accord upon the question decided in the principal case. In some of the states there are statutes dealing with this question and similar to the statute in the principal case and in others there are not. The statute mentioned above was copied from the New York statute, but the New York cases reach a different conclusion. The earlier New York statute did not authorize a granting of custody of the children when there was no decree for divorce and separation, and the court held that the intent of the statute above, passed later, was merely to authorize granting of custody in cases where the wife had statutory grounds sufficient to get a separation but had waived them or condoned the offense. *Davis* v. *Davis,* 75 N. Y. 221; *Atwater* v. *Atwater,* 36 How. Prac. 431; *Davis* v. *Davis,* 1 Hun 444; *Douglas* v. *Douglas,* 5 Hun 140; *Robinson* v. *Robinson,* 131 N. Y. Supp. 260. In other states where the statute is similar the right to a decree of custody has been upheld. *Cornelius* v. *Cornelius,* 31 Ala. 479; *Johnson* v. *Johnson,* 57 Kan. 343; *in Re Cooper,* 86 Kan. 573. In *Anderson* v. *Anderson,* 124 Cal. 48, maintenance was given a wife for herself and allowance for support of her minor child. But see *Brenot* v. *Brenot,* 102 Cal. 294. Other cases granting custody, where no statute was mentioned are: *Knoll* v. *Knoll,* 114 La. 703; *Horton* v. *Horton,* 75 Ark. 22; *Hoskins* v. *Hoskins,* 28 Ky. Law Rep. 435. Contra, *Garrett* v. *Garrett,* 114 Ia. 439; *Thomas* v. *Thomas,* 250 Ill. 354; *King* v. *King,* 42 Mo. App. 454. It is settled that when the husband and wife have separated and are living apart the court may determine which parent shall have the custody of the children in habeas corpus proceeding. The instant case contains an exhaustive discussion of the authorities and seems to have slightly the weight of authority with it.

EVIDENCE—BLOODHOUNDS.—Appellant was tried and convicted of crime. At the trial testimony as to the conduct of a bloodhound was offered by the state as evidence of the accused's guilt, and was rejected as incompetent and inadmissible. In spite of the ruling, some evidence of this kind was introduced incidentally in proving other facts. The appellant's requested instruction to the effect that evidence as to the bloodhounds should not be considered in determining his guilt was refused, and later a motion for a new trial was overruled. *Held,* that a new trial should be granted for error in not giving the instruction requested. *Ruse* v. *State* (Ind. 1917), 115 N. E. 778.

The decision in the principal case, holding that bloodhound evidence is incompetent and inadmissible, is supported by few very recent cases. *People* v. *Pfanschmidt,* 262 Ill. 411, 104 N. E. 804, Ann. Cas. 1915A 1171; *Stout* v. *State,* 174 Ind. 395, 92 N. E. 161, Ann. Cas. 1912D 37; *Brott* v. *State,* 70 Neb. 395, 97 N. W. 593, 63 L. R. A. 789. For a discussion of "the competency of the conduct of bloodhounds as evidence in criminal cases" see 2 MICH. L. REV. 402. The great majority of cases are agreed in holding that upon a proper foundation being first laid as to the training, testing, and experience of a dog in trailing human beings, evidence is admissible as to his conduct, actions, and doings while following the trial of one accused of

crime, the weight of such evidence to be determined by the jury in the light of all the surrounding circumstances. *Pedigo* v. *Commonwealth,* 103 Ky. 41, 44 S. W. 143, 42 L. R. A. 432, 82 Am. St. Rep. 566; *State* v. *Adams,* 85 Kan. 435, 116 Pac. 608, 35 L. R. A. N. S. 70; *Carter* v. *State,* 106 Miss. 507, 64 So. 215, 50 L. R. A. N. S. 1112; *Hargrove* v. *State,* 147 Ala. 97, 41 So. 592, 10 Ann. Cas. 1126; *State* v. *Norman,* 153 N. C. 591, 68 S. E. 917. For a full collection of cases see notes to 42 L. R. A. 432; 35 L. R. A. N. S. 870; Ann. Cas. 1912D 39; Ann. Cas. 1915A 1193. The ruling in the principal case seems indicative of a modern tendency to hold this kind of evidence inadmissible,—at least in northern jurisdictions.

EVIDENCE—EXCLUSION OF TESTIMONY AS TO HOW LIBEL MADE LIBELED PERSON FEEL.—Plaintiff, a minister, sued defendant for a libel contained in defendant's newspaper, calling the plaintiff an "interloper, a meddler, and a spreader of distrust, discontent and sedition." A witness for the plaintiff was asked how this libelous matter seemed to make the plaintiff feel. *Held,* that the answer was properly excluded because it called for the opinion of the witness. *Van Lonkhuyzen* v. *Daily News Co.* (Mich. 1917), 161 N. W. 979.

A search of the authorities discloses that only one jurisdiction, Alabama, follows the instant case. In *McAdory* v. *State,* 59 Ala. 92, in a prosecution for arson it was held error for a witness to state that the defendant "looked downcast," because it was merely a statement of the witness's opinion. To the same effect, in *Johnson* v. *State,* 17 Ala. 618, the court held it error for a witness to say "the prisoner looked serious, although habitually a lively man." In neither case did the courts give satisfactory reasons, but simply called it opinion evidence. Seemingly all the other authorities, for cogent reasons, take the opposite view. In *State* v. *McKnight,* 119 Ia. 79, 93 N. W. 63, the court held it proper for a witness to testify that the deceased when sick "appeared to be despondent" and "did not seem hopeful," without stating the facts upon which he based his opinion, on the theory that it was mixed fact and opinion. In *State* v. *Bradley,* 64 Vt. 466, 24 Atl. 1053, a witness was permitted to testify that when accused of the crime the defendant "seemed kinder worried," because it is more a statement of a fact than of an opinion. In *Fritz* v. *Hudson Union Tel. Co.,* 25 Utah 263, 71 Pac. 209, the statement "he looked at me in a disgusted way" just before his accident, was held to be a fact, not an opinion. In *State* v. *Wright,* 112 Ia. 436, 84 N. W. 541, it was held error to exclude the statement that the defendant "looked queer." These statements are of exactly the same character as the answer to the question in the instant case. The question would at most, call for a mixed answer of fact and opinion and it seems, according to the authorities, should have been answered. But even admitting that the answer called for an opinion purely, it still should have been admitted. One of the exceptions to the opinion rule allows a layman even to give an opinion where it is practically impossible for the witness to make the jury see and hear what he saw and heard, by reciting the facts without